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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/848,255	05/04/2001	Dennis Charles Clemes	032228.0006	6320
30678	7590	03/24/2004	EXAMINER	
CONNOLLY BOVE LODGE & HUTZ LLP			BRUENJES, CHRISTOPHER P	
SUITE 800			ART UNIT	
1990 M STREET NW			PAPER NUMBER	
WASHINGTON, DC 20036-3425			1772	

DATE MAILED: 03/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/848,255

Applicant(s)

CLEMES ET AL.

Examiner

Christopher P Bruenjes

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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DETAILED ACTION

WITHDRAWN REJECTIONS

1. The 35 U.S.C. 102 rejections of claims 6-8 as anticipated by Clemes of record in the Office Action mailed October 20, 2003, Page 3 Paragraph 3, have been withdrawn due to Applicant's arguments in the Paper filed January 20, 2004.

REPEATED REJECTIONS

2. The 35 U.S.C. 103 rejections of claims 1-5 over Clemes in view of Razeto et al of are repeated for the reasons previously of record in the Office Action mailed October 20, 2003, Pages 4-6 Paragraph 4.

NEW REJECTIONS

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

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The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
 2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
3. Claims 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clemes (USPN 5,106,596) in view of Razeto et al (USPN 4,748,904).

Clemes teaches a first sheet comprising a paper substrate, a second sheet comprising a paper substrate and a first coating of a substance, which, in the presence of moisture, generates sulfur dioxide such as sodium metabisulfate. The sheets are bonded together to provide a series of closed pockets between the sheets, in which each pocket is has a powdered substance contained therein, which, in the presence of moisture, generates sulfur dioxide such as sodium metabisulfate (col.1, 1.17-27). Clemes further teaches that other substances that in the presence of moisture generate sulfur dioxide that can be substituted for sodium metabisulfate are an acidic mixture comprising sodium sulfite and fumaric acid or an acidic mixture

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comprising sodium sulfite and potassium bitartrate (col.2, 1.35-41). One of ordinary skill in the art would have recognized that these equivalent sulfur dioxide generators are substituted for sodium sulfate mentioned in column 1, lines 17-27.

Clemes fails to explicitly teach that the first and second sheets also comprise a coating of weldable synthetic plastics material on the surface facing the pockets. However, Razeto teaches a gas generator for preserving fruits and vegetables in which the sheets comprising paper substrates are thermal sealed to each other to form the pockets. Razeto further teaches that synthetic weldable plastics material such as polyethylene or PVC are coated on the inner surfaces of the paper substrate in order to facilitate the thermal seal of the individual sheets to each other (col.3, 1.1-21). One of ordinary skill in the art would have recognized that weldable synthetic plastics material are added to paper substrates forming gas generators for preserving fruits and vegetables in order to facilitate the thermal seal of the sheets when forming pockets while still preserving a permeable layer for moisture to penetrate, as taught by Razeto et al.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the applicant's invention was made to add weldable synthetic plastics materials to the

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surface of the two sheets facing the pockets of Clemes in order to facilitate thermal sealing while maintaining moisture permeability, as taught by Razeto et al, and when the weldable synthetic plastics materials are added to the two sheets of Clemes the two sheets become composite sheets.

ANSWERS TO APPLICANT'S ARGUMENTS

4. Applicant's arguments regarding the 35 U.S.C. 102 rejections of claims 6-8 as anticipated by Clemes have been considered but are moot since the rejections have been withdrawn.

5. Applicant's arguments regarding the 35 U.S.C. 103 rejections of claims 1-5 over Clemes in view of Razeto et al have been fully considered but they are not persuasive.

In response to Applicant's argument that the references do not teach or suggest all claimed limitations, Razeto in Figure 2 teaches that Figure 4 represents layer 18, by showing that Figure 4 is a magnified representation of layer 18 in Figure 2. Although the specification may present other situations in which layer 18 is not represented by Figure 4, the disclosure based on the drawings do teach layer 18 comprising a paper layer and polyethylene coating layer. Furthermore, reference numbers 12

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and 14 are thermal seals and inherently in order to thermal seal layers together the two layers are similar plastics, since layer 16 has an inner layer of polyethylene, layer 18 inherently also has an inner layer of polyethylene in order to form a thermal seal between the two layers.

Razeto further discloses that the paper of layer 18 is impregnated with a gas releasing mixture, and it would be obvious to one of ordinary skill that part of the impregnated gas releasing mixture would remain on the surface and would therefore be present between the paper and plastic layers. Also, the impregnation of the paper layer with the gas releasing mixture and a coating of polyethylene has an equivalent function to a coating of a gas releasing mixture between the paper layer and a coating of polyethylene. Both function to release gas quickly in order to preserve fruits and vegetables before the slow diffusion of gas from the granulated material in the pocket formed by the two sheets heat sealed together. One of ordinary skill in the art would have recognized that taking a gas releasing mixture and coating it onto a paper layer or impregnating the paper layer serve the same function and determining which method of adding the mixture to the structure to use would be within the level of ordinary skill in the art, absent the showing of unexpected result.

In response to Applicant's argument that the references are not properly combined because Razeto et al teaches away, a prior art reference that "teaches away" from the claimed invention is a significant factor to be considered in determining obviousness; however, "the nature of the teaching is highly relevant and must be weighed in substance. A known or obvious composition does not become patentable simply because it has been described as somewhat inferior to some other product for the same use." See *In re Gurley*, 27 F.3d 551, 554, 31 USPQ2d 1130, 1132 (Fed. Cir. 1994) and MPEP 2145, especially section X D 1. In this case, Razeto et al teach that although sulfur dioxide generators have acceptable preservation properties for shipping grapes packaged in containers, they are inferior to chlorine generators because sulfur dioxide generators decolorize the grapes. Therefore, the combination is proper because Razeto et al does state that the sulfur dioxide generators are useful for applicant's purpose, applicant does not distinguish the claimed sulfur dioxide generators from the prior art sulfur dioxide generators, and applicant asserts no discovery beyond what was known to the art.

Conclusion

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6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher P Bruenjes whose telephone number is 571-272-1489. The examiner can normally be reached on Monday thru Friday from 8:00am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Christopher P Bruenjes
Examiner
Art Unit 1772

CPB *Ch-B*
March 10, 2004

Harold Pyon
HAROLD PYON
SUPERVISORY PATENT EXAMINER
1772

3/4/04